

E-Filed: December 20, 2013

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

KIERON SWEENEY,

No. C13-02817 HRL

Plaintiff,

**ORDER RE NOTICE OF
VOLUNTARY DISMISAL**

v.

CHRISTINA LAFRANCE CHRISTNER,
ET AL.,**[Re: Docket No. 21]**

Defendants.

Plaintiff Kieron Sweeney sued defendants Christina LaFrance Christner and Ryan LaFrance for an alleged breach of an oral agreement. On November 22, 2013, at 11:05 AM, Sweeney e-filed a Notice of Voluntary Dismissal. Ten minutes later, defendants e-filed their Counterclaim and Answer to the Complaint, which effectively served Sweeney electronically upon filing.

“[T]he plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A). “Unless the notice . . . states otherwise, the dismissal is without prejudice.” Fed. R. Civ. P. 41(a)(1)(B). “This ‘absolute right’ for a plaintiff voluntarily to dismiss an action when the defendant has not yet served an answer or a summary judgment motion leaves no role for the court to play.” *Am. Soccer Co. v. Score First Enterprises*, 187 F.3d 1108, 1110 (9th Cir. 1999). “The filing of a notice of voluntarily dismissal with the court automatically terminates the action as to defendants who are the subjects of the notice. . . . Such a dismissal leaves the parties as

1 though no action had been brought.” *Id.* (quoting *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th
2 Cir. 1997)).

3 Because Sweeney filed a notice of voluntary dismissal before defendants served an answer
4 or motion for summary judgment, the action is automatically dismissed without prejudice.¹
5 Accordingly, all hearings and deadlines are terminated. If defendants wish to pursue the claims
6 raised in their Counterclaim, they must do so in a separate action. The clerk shall close this file.

7 **IT IS SO ORDERED.**

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9 Dated: December 20, 2013



10 HOWARD R. LLOYD
11 UNITED STATES MAGISTRATE JUDGE
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28 ¹ On December 3, 2013, a case management conference was held, at which time the Court expressed to the parties its view that the case had been dismissed. Nonetheless, defendants were given four days to file a letter brief addressing why the case should not be dismissed. They did not do so.

C13-02817 HRL Notice will be electronically mailed to:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.